



Paper No. 5

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Robert C. Freed
MOORE & HANSEN
2900 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

COPY MAILED**MAR 06 2002****OFFICE OF PETITIONS**

In re Application of
Schmeichel, et al.
Application No. 09/930,680
Filed: August 14, 2001
Attorney Docket No. A20-009-01-US

DECISION ON PETITION

This is a decision on the "Petition for Corrected Filing Date under 37 CFR Section 1.10(d)," filed January 23, 2002 (certificate of mailing December 14, 2001), requesting that the above-identified application be accorded a filing date of August 14, 2001, rather than the presently accorded filing date of August 16, 2001.

The petition is **GRANTED**.

Petitioner maintains that the above-identified application was mailed to the U.S. Patent and Trademark Office (USPTO) by Express Mail on August 14, 2001, and although United States Postal Service (USPS) records indicate that it was received by the USPS on August 14, 2001, the "date-in" marking on the "Express Mail" mailing label was omitted by the USPS. Petitioner respectfully requests correction of the filing receipt to accord the application with the filing date when the application was received by the USPS, August 14, 2001. In support, petitioner submitted *inter alia*:

- an affidavit of legal secretary Susan J. Anderson, detailing a status inquiry made to the USPS in which she was told that the Express Mail item "was accepted or we picked it up on August 14, 2001, at 11:59 pm;"
- a copy of their filing receipt mailed September 21, 2001, and received in counsel's Office on September 24, 2001;
- a "true" copy of the United States Postal Service "Post Office to Addressee" "Express Mail" mailing label, EL850930164US, with the "date-in" omitted;
- a "true" copy of the application transmittal, bearing the appropriate "Express Mail" No. EL850930164US; and
- a "true" copy of the relevant page of petitioner's "Express Mail Deposit Log," with the following headings: date, time, initials, file No., Express Mail No., App Serial No., Client Name, Drop Box Location, Deposit Date, Time of Deposit, and Time of Last Pickup.

Preliminarily, it is concluded that the petition was filed promptly after petitioner received notice by way of filing receipt that the Office had accorded a filing date of August 16, 2001. (It is noted that upon receipt of an Express Mail label with the date-in omitted, petitioner promptly began investigating with the USPS as to the date of acceptance of the package, confirming a date-in of August 14, 2001). The evidence of record further shows that the number of the "Express Mail" mailing label, EL850930164US, is on the correspondence of record presently accorded a filing date of August 16, 2001, and thus, was placed on the correspondence prior to the original mailing.

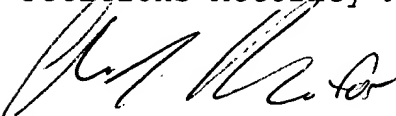
Finally, petitioner has made a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. This showing is not corroborated by petitioner's "Express Mail Deposit Log." This log is very persuasive except it does not include an entry that establishes that the log entry came into being after and within 1 business day of the "3:10" pm deposit. (Petitioner may wish to consider amending the log accordingly.) Nonetheless, the USPTO's USPS Express Mail Information Database corroborates that the "Express Mail" package was accepted at 11:59 pm on August 14, 2001 (copy of database record enclosed).

Having considered the evidence, it is concluded that petitioner has shown that the "date-in" on the "Express Mail" mailing label was omitted by the USPS, and that the requested filing date, August 14, 2001, is the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup of the day. The proper date to be accorded this application is August 14, 2001, not August 16, 2001.

The petition fee has been refunded to Deposit Account No. 13-4300, as authorized.

The application is being returned to the Office of Initial Patent Examination for further processing including correction of the filing date to August 14, 2001, and mailing of a corrected filing receipt.

Telephone inquiries specific to this matter may be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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